

JUN 19 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION_____
IN RE:

CASE NO. 99-77458

Aaron A. Beckham,

CHAPTER 13

Debtor.
_____JUDGE MASSEY
_____ORDER DENYING MOTIONS TO DISBURSE UNCLAIMED FUNDS

In this closed case, Debtor Aaron Beckham has filed two motions to disburse unclaimed funds. The motions point out that the Chapter 13 Trustee paid into the registry of this Court the sum of \$735.74, representing a payment or payments made by the Trustee to First Nationwide Mortgage Corp., which filed a proof of a secured claim in this case. One of the motions included an exhibit purporting to show that First Nationwide has been dissolved. The ground on which these motions rest is merely that First Nationwide has never claimed these funds. That fact does not answer the crucial question, which is whether the debt has been paid.

First Nationwide might have foreclosed on the property securing its claim and might have obtained a deficiency judgment. Or, it may not have foreclosed and is still owed the debt. Or, the debt may have been refinanced and paid in full. Or, Debtor may have paid the debt on the sale of the property, assuming it has been sold since the claim was filed, or Debtor may have paid the debt after the bankruptcy case outside the plan before or after the case was closed.

Section 347 of the Bankruptcy Code, entitled "Unclaimed Property," states:

(a) Ninety days after the final distribution under section 726, 1226, or 1326 of this title in a case under chapter 7, 12, or 13 of this title, as the case may be, the trustee shall stop

payment on any check remaining unpaid, and any remaining property of the estate shall be paid into the court and disposed of under chapter 129 of title 28.

(b) Any security, money, or other property remaining unclaimed at the expiration of the time allowed in a case under chapter 9, 11, or 12 of this title for the presentation of a security or the performance of any other act as a condition to participation in the distribution under any plan confirmed under section 943(b), 1129, 1173, or 1225 of this title, as the case may be, becomes the property of the debtor or of the entity acquiring the assets of the debtor under the plan, as the case may be.

Chapter 129 of title 28 of the United States Code has four sections, §§ 2041-2044. The only one of those sections dealing with disbursements is section 2042, which provides:

No money deposited under section 2041 of this title shall be withdrawn except by order of court.

In every case in which the right to withdraw money deposited in court under section 2041 has been adjudicated or is not in dispute and such money has remained so deposited for at least five years unclaimed by the person entitled thereto, such court shall cause such money to be deposited in the Treasury in the name and to the credit of the United States. Any claimant entitled to any such money may, on petition to the court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing payment to him.

28 U.S.C.A. § 2042. Thus, Chapter 129 of title 28 does not answer the question of who is entitled to such funds.

Section 347(b), which is set out above, provides a mechanism that permits a debtor in a case under Chapter 9, 11, or 12 to obtain unclaimed funds pursuant to a plan provision setting a deadline for performance of an act that is a condition for participating in a distribution. The omission of a reference to Chapter 13 indicates that a Chapter 13 debtor is not automatically entitled to unclaimed funds merely because they are unclaimed.

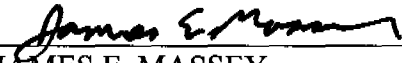
Hence, in order to be entitled to receive the funds not claimed by First Nationwide, Debtor must demonstrate by competent evidence that the debt in question was paid. If he has such evidence, he may file a new motion and seek an evidentiary hearing, or he may frame the motion

as one for summary judgment. Either way, he must provide appropriate notice to First Nationwide. If First Nationwide has not been paid but never claims the \$735.74, its failure to make such a claim does not entitle Debtor to those funds, even if it no longer exists.

For these reasons, it is

ORDERED that Debtor's motions to disburse unclaimed funds (document nos. 59 and 60) are DENIED without prejudice.

Dated: June 16, 2006.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE